

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



October 15, 2001

**CA-32**  
**10/25/2001**

TO: PARTIES OF RECORD IN APPLICATION 01-06-037

This is the draft decision of Administrative Law Judge (ALJ) Duda. It will be on the Commission's agenda at the meeting on October 25, 2001. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 77.7(f)(9), comments on the draft decision must be filed within seven days of its mailing.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. In addition to service by mail, parties should send comments in electronic form to those appearances and the state service list that provided an electronic mail address to the Commission, including ALJ Duda at [dot@cpuc.ca.gov](mailto:dot@cpuc.ca.gov). Finally, comments must be served separately on the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious methods of service.

/s/ LYNN T. CAREW by PSW  
Lynn T. Carew, Chief  
Administrative Law Judge

LTC:hkr

Attachment



Decision **DRAFT DECISION OF ALJ DUDA** (Mailed 10/15/2001)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of BroadBand Office  
Communications, Inc. for Authority to Withdraw  
Entirely from Public Service.

Application 01-06-037  
(Filed June 20, 2001)

**OPINION ALLOWING WITHDRAWAL FROM SERVICE**

**I. Background**

BroadBand Office Communications, Inc. (BBOC) (U-6326-C) filed an application on June 20, 2001, pursuant to Pub. Util. Code § 451 and General Order (GO) 96-A, requesting authority from the California Public Utilities Commission (Commission) to withdraw entirely from service in California.

In March 2000, BBOC obtained its Certificate of Public Convenience and Necessity (CPCN) to provide resold and limited facilities-based competitive local exchange service, interLATA, and intraLATA services<sup>1</sup> in California.<sup>2</sup> BBOC provides local exchange service and long distance, including Centrex, special

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<sup>1</sup> California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

<sup>2</sup> See Decision (D.) 00-03-047 (March 16, 2000).

access, private line and Digital Subscriber Line service, to approximately 137 customers in the state.

In the present application, BBOC states that on May 9, 2001, the parent company of BBOC, BroadBand Office, Inc. (BBO), filed for protection under Chapter 11 of the Bankruptcy Code. Despite numerous efforts to secure additional financing to maintain operations, BBOC states that its parent company was unable to find an investor or buyer. As a result, BBOC explains that it has no choice but to terminate service to customers in California.

On May 10, 2001, BBO sent a notice to all of its current customers in California indicating that it was in bankruptcy and that it and its subsidiaries intended to discontinue service to all customers in 30 days, or by June 11, 2001. The letter explained that customers would need to arrange for another local and long distance provider and suggested that customers contact the incumbent local telephone company (ILEC) or a competitive carrier. The notice provided customers with a toll-free customer assistance number to address any questions or concerns.

BBOC sent a second customer notice regarding discontinuance of service to customers on June 21, 2001. The notice stated that BBO would discontinue service on June 26, 2001 and urged customers to arrange alternate service providers immediately.

As further support for its withdrawal from service in California, BBOC states that it does not owe any outstanding regulatory surcharges to the Commission.

## **II. Discussion**

The application before us raises two major issues. First, should the Commission grant BBOC the authority to withdraw its CPCN to provide resold

local exchange services to customers in the State of California? Second, if so, does the customer notification provided by BBOC meet the minimum established notice requirements set in D.97-06-096?

**A. Commission Authorization to Withdraw From Service**

According to GO 96-A, Section XIV, “No public utility of a class specified herein shall, unless authority has been obtained from the Commission, either withdraw entirely from public service or withdraw from public service in any portion of the territory served.” Thus, BBOC is required to continue to offer local exchange service to existing customers until or unless authorized to discontinue it by this Commission. According to BBOC’s filings, it has not withdrawn from service without Commission approval and it continues to maintain service to 91 customers in California while awaiting authorization to withdraw from service.<sup>3</sup>

As noted in several recent orders,<sup>4</sup> it is disheartening to find competitive local exchange carriers and long distance carriers exiting competitive markets given our efforts over the past several years to promote the growth of competitive alternatives for consumers. We regret that carriers find it necessary to file applications intended to diminish, rather than increase, the competitive choices available to local customers. Nevertheless, just as our rules do not compel carriers to enter into competitive markets, neither can we obligate a carrier, particularly one that has filed for bankruptcy, to continue to serve a market. As we established in several recent orders, we will allow BBOC to

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<sup>3</sup> See BBOC’s Response to Administrative Law Judge (ALJ) Ruling, filed August 17, 2001.

<sup>4</sup> See, e.g., D.01-06-036 and D.01-08-068.

withdraw from service after providing any remaining customers with an additional ten days notice to provide time for those customers to make arrangements with another carrier. As a further condition of the withdrawal, we will require BBOC to transfer any remaining customers to the underlying ILEC, either Pacific Bell Telephone Company (Pacific) or Verizon California, Inc. (Verizon), if they have not chosen another provider within ten days of receiving final notification from BBOC. Likewise, Pacific and Verizon are directed to accept all customers transferred to them from BBOC, subject to the ILEC's existing rights of termination after proper notice. This requirement will ensure that BBOC customers will continue to have uninterrupted service.

### **B. The Customer Notice Process**

Customers are entitled to be properly informed about their options when a carrier seeks to exit from the local market. In D.97-06-096, we established minimum requirements for transfer of a customer base from one carrier to another.<sup>5</sup> In D.01-06-036, we found that the notice requirements of D.97-06-096 apply when a carrier is withdrawing from service and transferring any remaining customers to the ILEC. (D.01-06-036, p. 21.)

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<sup>5</sup> D.97-06-096 established the following minimum notice requirements:

1. The notice must be in writing;
2. The carrier must provide it to customers no later than 30 days before the proposed transfer;
3. The notice must contain a straightforward description of the upcoming transfer, any fees the customer will be expected to pay, a statement of the customer's right to switch to another carrier, and a toll-free number for questions; and
4. The notice and the carrier's description of service to customers must be included in the advice letter.

We find that the notification provided by BBOC to its customers reasonably complied with these notice requirements. BBOC's initial letter to customers provided the required 30 days notice that service would be discontinued. The notice contained a straightforward description of the transfer, provided directions regarding transfer to another carrier, and listed a toll-free number for further assistance. The notice also contained an adequate description of BBOC's services as required by the notice requirements.

Although BBOC's notice to customers did not state that Commission authorization was required before service could be discontinued, we are satisfied that BBOC did not disrupt service to any customers while awaiting Commission approval of this application. Therefore, we find that BBOC has reasonably met the notice requirements established in D.97-06-096. As stated above, we will require one final 10-day notice to customers indicating the Commission has approved the withdrawal of service.

### **III. Conclusion**

While we regret BBOC's need to withdraw from service in California, we recognize that our rules for competitive carriers provide the flexibility for such action, subject to proper measures to notify customers in advance and to assist them in transferring smoothly to another carrier. BBOC customers will be assured of continued service provisioned through the ILEC as "carrier of last resort" if the customers have not chosen another carrier on their own.

We will, therefore, grant the application of BBOC to withdraw from providing local exchange service and long distance service subject to the following terms and conditions:

1. We will require BBOC to send a notice within ten days of this order to all of its current customers. The notice shall explain that the Commission has approved the withdrawal and that if the

customer does not choose a new service provider within ten days, the customer will be transferred to the ILEC.

2. Customers shall be given a minimum of ten days from the date of this notification to terminate their service and to find another carrier.
3. At the end of the 10-day notice period, we will require BBOC to transfer to the underlying ILEC any customers that do not choose another provider, subject to the ILECs' existing rights of termination after proper notice.
4. BBOC shall send confirmation to the assigned ALJ certifying that the final notice has been sent as directed and that any remaining customers have been transferred to the underlying ILEC.

On the condition that BBOC complies with proper notice requirements and the other terms specified in this decision, we will authorize BBOC to withdraw from offering local exchange service, intraLATA and interLATA service in California.

#### **IV. Categorization**

In Resolution ALJ 176-3066 dated June 28, 2001, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were necessary. Based on the record, we conclude that a public hearing is not necessary.

#### **V. Comment on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Pursuant to § 311(g)(2), BBOC agreed to reduce the otherwise applicable 30-day period for public review and comment to seven days. Comments were filed by \_\_\_\_\_.



**Findings of Fact**

1. BBOC provides competitive local exchange service and interexchange and intraLATA long distance service in California pursuant to the certification it received from the Commission in 2000.
2. BBOC filed for bankruptcy on May 9, 2001.
3. BBOC seeks to withdraw from the provision of local exchange service, interexchange, and intraLATA long distance service in California.
4. On May 10, 2001, BBOC provided notice to its current customers that it planned to discontinue service on June 11, 2001, due to its bankruptcy filing. The notice directed customers to switch to another local carrier to avoid service interruptions and provided a toll free number for further assistance.
5. On June 21, 2001, BBOC sent a second notification to customers that it would discontinue service on June 26, 2001.
6. As of August 17, 2001, BBOC was providing service to 91 customers while awaiting Commission approval to withdraw from the market.
7. No protests to this application were filed and a hearing is not required.

**Conclusions of Law**

1. Under GO 96-A, Commission approval is required before a carrier may withdraw from the provision of public utility service.
2. The customer notice requirements of D.97-06-096 apply to requests to discontinue service such as this one.
3. BBOC should be granted authority to discontinue offering resold local exchange service subject to the following conditions:
  - a. Within ten days of the effective date of this order, BBOC shall send a notice to all of its current California customers advising them that the Commission has authorized BBOC to withdraw from providing local exchange service effective ten days following the notice to customers.

- b. The notice shall explain that the Commission has approved the withdrawal and that if the customer does not choose a new service provider within ten days, the customer will be transferred to the ILEC.
- c. Any customers who do not select an alternative local exchange provider after the 10-day notice period shall be transferred to the underlying ILEC, subject to the ILEC's existing rights of termination, after proper notice.
- d. BBOC shall send confirmation to the assigned ALJ certifying that the notices have been sent as directed and that any remaining customers have been transferred to the underlying ILEC.

## O R D E R

### **IT IS ORDERED** that:

1. The application of BroadBand Office Communications, Inc. (BBOC) to withdraw from the provision of local exchange service, interexchange and intraLATA long distance service is hereby granted subject to the terms and conditions contained in this order.
2. BBOC is directed to prepare and mail within ten days of this decision a notice, as set forth in this decision, to its current California customers advising them that the Commission has authorized BBOC to withdraw from providing service effective ten days following the notice to customers.
3. Pacific Bell Telephone Company (Pacific) and Verizon California, Inc. (Verizon) are directed to accept all customers transferred to them from BBOC, subject to their rights to terminate such customers after proper notice if prescribed standards of service provision are not met.
4. BBOC shall send a compliance report to the assigned Administrative Law Judge, within 30 days of this decision, certifying that customer notification has properly been sent as directed in this order, that any remaining customers have

been transferred to the underlying incumbent local exchange carrier, and that no customers were disconnected for failure to choose another provider.

5. BBOC shall retain its Certificate of Public Convenience and Necessity local exchange authority pending a final order in this docket following receipt and approval of the above-referenced compliance report.

6. A copy of this order shall be served on Pacific and Verizon.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.